

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 DARRYL LEE SANDERS,
10 Petitioner,
11 vs.
12 DWIGHT D. NEVEN, *et al.*,
13 Respondents.
14

2:12-cv-01225-APG-CWH

ORDER

16 This action is a petition for writ of habeas corpus by Darryl Lee Sanders, a Nevada prisoner.
17 In an order entered on May 7, 2015, the court directed Sanders to make an election regarding
18 Ground 1 of his habeas corpus petition, which the court found to be unexhausted in state court.
19 See Order entered May 7, 2015 (ECF No. 27); see also Order entered January 26, 2015 (ECF No.
20 23). Sanders was to either inform the court that he wishes to abandon Ground 1 and proceed on the
21 remaining exhausted claims in his petition (Grounds 2 (in part), 9 (in part), and 10), or inform the
22 court that he wishes to dismiss his entire petition without prejudice. See Order entered May 7, 2015.
23 In the May 7 order, the court warned Sanders that, because of the operation of the statute of
24 limitations, dismissal of his entire petition, even “without prejudice,” would likely mean that he is
25 never able to have any of his claims for habeas corpus relief reviewed on their merits in federal
26 court. See *id.* Sanders was to make his election within 30 days after the May 7 order -- by

1 June 8, 2015. Sanders did not make his election by that date. Indeed, the court did not hear from
2 Sanders at all.

3 On June 15, 2015, the court *sua sponte* granted Sanders a 30-day extension of time to make
4 his election. *See* Order entered June 15, 2015 (ECF No. 30). The court ordered that Sanders must
5 make his election by July 8, 2015. *See id.* The court reiterated that if Sanders failed to make his
6 election in the time allowed, this case would be dismissed in its entirety, without prejudice. *See id.*
7 And, again, the court warned that while the dismissal of this case would be “without prejudice,” it is
8 likely that Sanders would be unable to bring a subsequent federal habeas corpus action, on account
9 of the operation of the statute of limitations. *See id.* Again, Sanders did not respond.

10 Therefore, pursuant to *Rose v. Lundy*, 455 U.S. 509 (1982) (holding that all claims in a
11 habeas petition must be exhausted), the court will dismiss this action without prejudice.

12 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITHOUT**
13 **PREJUDICE.**

14 **IT IS FURTHER ORDERED** that the petitioner is denied a certificate of appealability.

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

16 Dated: July 27, 2015.

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18 UNITED STATES DISTRICT JUDGE

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